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OFFICE OF PETITIONS

In re Application of :
Ullrich et al. : DECISION ON APPLICATION
Application No. 09/977,261 : FOR
Filed: October 16, 2001 : PATENT TERM ADJUSTMENT
Atty Docket No. 038602-1259 :
:

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT DETERMINATION UNDER 37 CFR §1.705(b)," filed August 13, 2004. Applicants request that the initial determination of patent term adjustment be corrected from zero (0) days to four (4) days.

The application for patent term adjustment is GRANTED.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is four (4) days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On May 28, 2004, the Office mailed a Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment (PTA) to date is 0 days. On August 13, 2004, applicants timely submitted an application for patent term adjustment (with required fee), disputing the reduction of one hundred fifty-two (152) days for failure to respond in a timely fashion to the

Notice to File Missing Parts mailed November 7, 2001. Applicants assert that their complete response was received June 7, 2002. Accordingly, the PTA should be subject to a reduction of only 120 days.

The record supports a conclusion that the patent issuing from the application is not subject to a terminal disclaimer.

The assessment of applicants' delay of 152 days has been found to be incorrect. A review of the application file reveals that applicants' response to the Notice to File Missing Parts of Application mailed November 7, 2001 (not November 8, 2001), is of record in the application with a date of receipt by the Office of June 7, 2002. Furthermore, the response was accepted as complete and proper. The response was filed outside the three-month period under 37 CFR 1.704(b), but only by 120 days. Accordingly, applicants' delay should have been assessed as 120 days.

In view thereof, the correct determination of patent term adjustment at the time of the mailing of the Notice of Allowance is four (4) days.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The Office will forward the file to the Office of Patent Publication so that a patent can be issued.

Telephone inquiries specific to this matter should be directed to Nancy Johnson, Senior Petitions Attorney, at (571) 272-3219.

Karin Ferriter
for

Karin Ferriter
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examination Policy

Enclosure: Copy of Revised PAIR Screen